

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEVE KIE CHANG,

Defendant.

No. CR06-376RSL

ORDER DENYING DEFENDANT'S
MOTION TO SUPPRESS EVIDENCE
FOR ILLEGAL SEARCH AND
SEIZURE

I. INTRODUCTION

This matter comes before the Court on defendant Steve Kie Chang's "Motion to Suppress Evidence for Illegal Search and Seizure" (Dkt. ##47, 48). In his motion, defendant moves to suppress evidence obtained from a search of his person and a search of his car on November 14, 2005. On February 25, 2008, the Court held an evidentiary hearing on the motion, and heard oral argument from counsel for the government and defendant. See Dkt. #51. For the reasons set forth below, the Court denies defendant's motion to suppress.

II. DISCUSSION

A. Background

On November 7, 2005, Officer Camden of the City of Milton Police Department ("MPD") was dispatched to a Rite Aid store in Milton to investigate a possible theft. Two Rite

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1 Aid employees reported that a well-dressed Asian man bought a pack of cigarettes, a planner,
2 and requested that \$400.00 be added to his pre-paid MasterCard. The first employee accepted a
3 check as payment for the items. When the second employee realized that a check had been
4 given as payment, the second employee left the store and approached the suspect who was now
5 in his car and informed him that the store could not accept a check for the pre-paid credit card.
6 When the Rite Aid employee requested that the suspect return the card, the suspect refused and
7 fled in a blue BMW Mini Cooper. The clerk identified the Mini Cooper's license plate number,
8 and a subsequent records check by the MPD revealed that it was registered to defendant Steve
9 Kie Chang.

10 On November 12, 2005, Officer Luckman of the MPD independently provided the two
11 Rite Aid employees with a photo array of possible suspects for the November 7, 2005 theft.
12 Both employees positively identified defendant Chang as the suspect.

13 On November 14, 2005, at approximately 2:18 a.m., Officer Luckman was eating his
14 "lunch" in his parked patrol car when a blue Mini Cooper passed him. A license plate check
15 identified defendant Chang as the Mini Cooper's registered owner. Officer Luckman stopped
16 the vehicle in the Emerald Queen Casino parking lot and called for two police units from the
17 City of Fife to assist him. Officer Luckman arrested the defendant for theft, forgery, and
18 possession of stolen property, placed him in handcuffs and read him his *Miranda* rights. The
19 only passenger in the car was cleared and released at the scene by the Fife officers.

20 Officer Luckman searched defendant after his arrest and found a Washington state
21 driver's license with defendant's picture, but a false name. Officer Luckman also found a wallet
22 containing, among other things, defendant's authentic Washington state driver's license and two
23 credit cards not in defendant's name. After searching defendant, Officer Luckman placed
24 defendant in the back of the patrol car and secured the items found on the defendant, including
25 the wallet, in the front of the patrol car. Once defendant was in the patrol car, Officer Luckman

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1 conducted a preliminary search of the Mini Cooper in the casino parking lot. During this search,
2 Officer Luckman found a loaded .45 caliber pistol under the driver-side floor mat, multiple
3 pieces of mail addressed to people other than defendant, three credit cards not in defendant's
4 name, and a 1" x 1" baggy containing what Officer Luckman believed to be methamphetamine
5 based on his training and experience.

6 By this time, the two units from the Fife Police Department that had been assisting
7 Officer Luckman needed to leave the scene.¹ The lighting in the casino parking lot was also not
8 optimal to conduct a search of the Mini Cooper, and there was a significant amount of early-
9 morning casino traffic. Based on these factors, and having just released the passenger and
10 knowing that defendant had allegedly committed crimes in the Fife area, Officer Luckman
11 decided that in the interest of his safety he should continue the search of the Mini Cooper in a
12 secure location. Given that the Fife Police Department maintained a secure lot only twenty
13 blocks and less than a five minute drive from where he was located, Officer Luckman had the
14 Mini Cooper towed to the Fife lot at approximately 3:36 a.m. Officer Luckman, with defendant
15 still in the back of the patrol car, followed the Mini Cooper while it was towed to the secure lot.

16 At the Fife Police Department's secure lot, Officer Luckman continued his search of the
17 Mini Cooper while defendant remained in the back of Officer Luckman's patrol car. During this
18 more thorough search, Officer Luckman discovered a red satchel, containing among other things,
19 a partially completed Washington state driver's license on photo paper, multiple Washington
20 state driver's licenses with defendant's picture but the names of others, a scale with a white
21 residue, a zip-lock bag containing what appeared to be methamphetamine, and mail and credit
22 cards not in defendant's name.

24 ¹ Officer Luckman testified that he was the only MPD officer on duty during the early morning
25 hours of November 14, 2005.

1 After the search of the Mini Cooper in the secure lot, Officer Luckman took defendant to
2 the Milton police station. At the Milton police station, Officer Luckman processed the items
3 recovered in the searches, including the wallet which contained not only the two credit cards not
4 in defendant's name, but also a United States Express Mail postal receipt with defendant's name
5 on it and a fragment of a check with a bank account number associated with where the money
6 from the forged bonds was ultimately deposited.²

7 Officer Luckman presented defendant with a Notice of Seizure and Intended Forfeiture
8 pursuant to RCW 69.50.505, which defendant refused to sign. Later in the morning of
9 November 14, 2005, defendant was transferred to Pierce County Jail and booked on charges
10 including identity theft, forgery, possession of stolen property in the second degree, unlawful
11 possession of a controlled substance with intent, possession of drug paraphernalia, and being a
12 convicted felon in possession of a firearm.

13 **B. Analysis**

14 In this federal case, defendant is charged with 33 counts of passing United States treasury
15 bonds with forged and falsely made endorsements, and 4 counts of presenting a forged power of
16 attorney. See Dkt. #31 (Superseding Indictment). In his motion, defendant moves to suppress
17 the evidence derived from the search and seizure of defendant and the Mini Cooper. See Dkt.
18 ##47, 48. At the evidentiary hearing, however, the government represented that it did not intend
19 to use at trial any of the material seized from the Mini Cooper. Instead, the government
20 represented that it intends to use only the material found in defendant's wallet, specifically the
21 Express Mail receipt and the check fragment with the bank account number. See EH Ex. 500.

22
23 ² It is unclear from Officer Luckman's testimony at the evidentiary hearing whether he discovered
24 the Express Mail receipt and the check fragment during the initial search of the wallet in the casino
25 parking lot, or whether he discovered them for the first time when processing the wallet at the Milton
26 police station. This, however, is a distinction without difference for purposes of the Court's analysis in
section II.B.1 below.

1 The government represented that the Express Mail receipt purports to show that defendant sent a
 2 package to the Bureau of Public Debt³ in October of 2005, and the bank account number on the
 3 check fragment was the account through which defendant allegedly processed the treasury bonds
 4 at issue in this case.

5 After narrowing the items at issue, the parties at the evidentiary hearing focused their
 6 attention on whether the Express Mail receipt and check fragment should be suppressed as the
 7 product of an unlawful search or seizure under the Fourth Amendment. Accordingly, the Court
 8 addresses these items first. The Court also considers the material obtained from the Mini
 9 Cooper in the event this material is offered at trial.

10 **1. Express Mail Receipt and Check Fragment with Bank Account Number**

11 The Fourth Amendment protects individuals against unreasonable searches and seizures.
 12 See U.S. Const. Amend. IV. A search conducted without a warrant is “per se unreasonable . . .
 13 subject only to a few specifically established and well-delineated exceptions.” Schneckloth v.
 14 Bustamonte, 412 U.S. 218, 219 (1973) (citations omitted). The government has the burden to
 15 show that a warrantless search was reasonable and did not violate the Fourth Amendment.
 16 United States v. Carbajal, 956 F.2d 924, 930 (9th Cir. 1992).

17 It is clearly established in the Ninth Circuit that incident to a lawful arrest, a warrantless
 18 search of a wallet on the person arrested is permissible under the Fourth Amendment. See
 19 United States v. Ziller, 623 F.2d 562, 562 (9th Cir. 1980) (“[A] search of the contents of the
 20 wallet is likewise permissible as being an incident to and part of a personal search.”).

21 Defendant does not challenge the legality of his November 14, 2005 arrest, nor the search of his
 22 person, including his wallet. Defendant contends that the Express Mail receipt and check
 23

24 ³ The Bureau of Public Debt is the agency responsible for the issuance and payment of savings
 25 bonds that are purchased by individuals.

1 fragment should not have been “seized,” but instead should have been returned to him after the
2 search and before he was booked at the Pierce County Jail. At the evidentiary hearing,
3 defendant contended, in an analogy to the “plain view” doctrine,⁴ that the Express Mail receipt
4 and the check fragment should not have been seized because the incriminating character of these
5 items was not apparent to Officer Luckman.

6 Defendant, however, misconstrues the potential evidentiary value of these items. It is
7 true that items clearly having no facial evidentiary value in a wallet—a family photo, for
8 example—should arguably not be seized. Here, however, the Express Mail receipt and check
9 fragment had colorable evidentiary value when connected to the charges for which defendant
10 was arrested—namely, possession of stolen property and identity theft. The wallet in which
11 these items were found contained credit cards not in defendant’s name. A wallet containing
12 documents with defendant’s name and bank account number in a wallet with credit cards not in
13 defendant’s name could be used to show that the credit cards were stolen. Without the items
14 connecting defendant’s name and bank account number with the allegedly stolen credit cards,
15 defendant could otherwise assert that the wallet did not belong to him—claiming, for example
16 that he was simply holding the wallet until he could return it to its rightful owner. Therefore,
17 contrary to defendant’s assertion, the Court concludes that the content of defendant’s wallet was
18 not improperly seized.

19 Additionally, defendant opposes the seizure of the wallet, as opposed to the search
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21
22 ⁴ See, e.g., Minnesota v. Dickerson, 508 U.S. 366, 375 (1993) (“Under that [plain-view]
23 doctrine, if police are lawfully in a position from which they view an object, if its incriminating character
24 is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it
25 without a warrant. If, however, the police lack probable cause to believe that an object in plain view is
contraband without conducting some further search of the object – *i.e.*, if its incriminating character is
not immediately apparent, – the plain-view doctrine cannot justify its seizure.”) (internal citations and
quotation marks omitted)).

1 because the potential evidentiary value of the Express Mail receipt and check fragment found in
2 defendant's wallet did not become apparent until Secret Service Special Agent Brian Augustyn's
3 involvement in January of 2006. At that time, Special Agent Augustyn was attempting to locate
4 defendant as part of his investigation into possible forged treasury bonds when he learned, based
5 on an NCIC check, that defendant was located in Pierce County Jail. Ultimately, Special Agent
6 Augustyn obtained Officer Luckman's report related to the defendant's arrest, which contained
7 photocopies of the contents of defendant's wallet seized on November 14, 2005, including the
8 Express Mail receipt and check fragment. See EH Ex. 2. In essence defendant contests Special
9 Agent Augustyn's "second look" at the contents of the wallet and their admission as evidence in
10 this case, which defendant asserts would not have been possible had the wallet not been seized.
11 Other courts have rejected similar reasoning.

12 In United States v. Passaro, 624 F.2d 938 (9th Cir. 1980), the defendant was convicted of
13 manufacturing and conspiracy to manufacture a controlled substance. Id. at 940. Before trial,
14 defendant moved *in limine* to exclude a photocopy of a document that had been removed from
15 defendant's wallet during a prior arrest for assault and battery of police officers who had
16 stopped defendant for a speeding violation. Id. When defendant arrived at the initial place of
17 detention for this arrest, defendant's wallet was seized, searched, and the document was
18 photocopied. Id. The document at issue set forth relationships between quantities that a
19 forensic chemist at trial testified were consistent with yields from methamphetamine production.
20 Id. at 941. Defendant's motion to suppress was denied, and the copy of this document was
21 admitted at trial on the methamphetamine charges. The wallet containing the original document
22 had been returned to the defendant. Id. at 943.

23 On appeal, the Ninth Circuit affirmed the trial court's ruling on the motion to suppress,
24 holding:

25 Just as the police in [United States v. Robinson, 414 U.S. 218 (1973)] could,

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1 incident to lawful arrest, search the defendant's person, including the contents of a
2 cigarette package found in the defendant's pocket, so too could the search incident
3 to Passaro's arrest include an inspection of the contents of his wallet to discover
4 evidence of crime. Under [United States v. Edwards, 415 U.S. 800 (1974)]
5 "searches and seizures that could be made on the spot at the time of the arrest may
legally be conducted later when the accused arrives at the place of detention." 415
U.S. at 803. The search here was valid and reasonable and the evidence seized
therefrom was admissible even though it was unrelated to the crime for which
Passaro was arrested.

6 Id. at 944. The Ninth Circuit based its holding on the conclusion that: "the wallet found in the
7 pocket of Mr. Passaro was an element of his clothing, his person, which is, for a reasonable time
8 following a legal arrest, taken out of the realm of protection from police interest" and the
9 Supreme Court's Edwards decision where "[t]he Court held that the warrantless search and
10 seizure of the clothing did not violate the Fourth Amendment, and that once the accused is
11 lawfully arrested and is in custody, the effects in his possession at the place of detention that
12 were subject to search at the time and place of his arrest may lawfully be searched and seized
13 without a warrant even though a substantial period of time has elapsed between the arrest and
14 the subsequent administrative processing, on the one hand, and the taking of the property for use
15 as evidence, on the other." Id. at 943-44 (emphasis added).

16 It is the same in this case. Here, the Express Mail receipt and check fragment were
17 photocopied while defendant was being processed by Officer Luckman at the Milton police
18 station. As an element of clothing, defendant's wallet and its contents were lawfully seized
19 without a warrant after his arrest and during processing at the Milton police station. Based on
20 Passaro it is irrelevant that the government intends to offer the Express Mail receipt and the
21 check fragment as evidence of a crime other than that for which the defendant was arrested.

22 Further support for the Court's denial of the motion to suppress is found in United States
23 v. Aldaco, 477 F.3d 1008 (8th Cir. 2007), where the Eight Circuit affirmed the trial court's
24 denial of defendant's motion to suppress evidence obtained from a warrantless second search of
25 a wallet. Id. at 1016. In Aldaco, the defendant did not challenge the initial search and seizure of

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1 his wallet done pursuant to a valid search warrant, but instead contended that once the police
 2 determined that the wallet had no evidentiary value and logged it into personal property storage,
 3 a warrant or his consent was required to search the wallet for a second time. Id. at 1013-14.
 4 The Eighth Circuit rejected Aldaco's argument on appeal, ultimately holding that "we find
 5 nothing unreasonable about the second search of Aldaco's wallet where the police previously
 6 had lawfully discovered it and taken it for safekeeping." Id. at 1015-16 (citing Lockhart v.
 7 McCotter, 782 F.2d 1275, 1279-80 (5th Cir. 1986); United States v. Lacey, 530 F.2d 821, 823-
 8 24 (8th Cir. 1976)).

9 For all these reasons, defendant's motion to suppress the Express Mail receipt and the
 10 check fragment is denied.

11 **2. Search of Mini Cooper at the Emerald Queen Casino**

12 The lawfulness of the search and seizure of material from the Mini Cooper at the casino
 13 parking lot presents a much simpler question. Before discussing this issue, however, the Court
 14 notes that the government represented at the evidentiary hearing that it did not intend to offer
 15 any of the material obtained from the search of the Mini Cooper.⁵ Therefore, the Court provides
 16 the following analysis in this section, and in section II.B.3 below, only as guidance in this case
 17 should defendant open the door to its admission at trial.

18 The search and seizure of the items from the Mini Cooper in the casino parking lot was
 19 presumptively reasonable under the search incident to arrest exception to the warrant
 20 requirement. See New York v. Belton, 453 U.S. 454, 460 (1981) ("[W]e hold that when a
 21 policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a
 22 contemporaneous incident of that arrest, search the passenger compartment of that
 23 automobile."). All of the items seized from the Mini Cooper in the casino parking lot were
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25 ⁵ The government, however, reserved its right at trial to present this material should defendant
 26 open the door to its admission.

found in the car's passenger compartment. In Thorton v. United States, 541 U.S. 615, 622-23 (2004), the Supreme Court held that police can search the entire vehicle passenger compartment incident to the arrest of someone who was a "recent occupant" of the vehicle. Id. at 622 ("Belton allows police to search the passenger compartment of a vehicle incident to a lawful custodial arrest of both 'occupants' and 'recent occupants.'"); 623 ("Once an officer determines that there is probable cause to make an arrest, it is reasonable to allow officers to ensure their safety and to preserve evidence by searching the entire passenger compartment."). Recently, in United States v. Weaver, 433 F.3d 1104 (9th Cir. 2006), the Ninth Circuit upheld a search of a vehicle incident to arrest even though the search occurred after the suspect was handcuffed and placed in the patrol car. Id. at 1107 (following Thorton); see also United States v. Osife, 398 F.3d 1143, 1144, 1146 (9th Cir. 2005) (upholding search of arrestee's pickup truck after he had been handcuffed and placed in the patrol car).

The search and seizure at issue here was conducted contemporaneously with defendant's arrest and was restricted to the Mini Cooper's passenger compartment of which defendant was a "recent occupant." Therefore, the search and seizure was presumptively reasonable under the search incident to arrest exception to the warrant requirement.⁶ Accordingly, the warrantless search and seizure of the items including the .45 caliber pistol, multiple pieces of mail addressed

⁶ On the same day as the evidentiary hearing in this case, the Supreme Court granted the petition for writ of certiorari in Arizona v. Gant, 2008 U.S. Lexis 2022, at *1 (Feb. 25, 2008) limited to the following question: "Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured?" Id. at *1; see Arizona v. Gant, 162 P.3d 640, 643 n.2 (Ariz. 2007) ("We agree with Justice Scalia's statement that in applying the Belton doctrine to justify a search of the car of a person handcuffed and confined in a police car 'stretches the [the doctrine] beyond its breaking point.' Thorton, 541 U.S. at 625 (Scalia, J., concurring in the judgment)."). Until the Supreme Court announces a rule to the contrary, this Court is bound to follow current Ninth Circuit authority which allows an officer, incident to a lawful arrest, to search an arrestee's vehicle after he or she is handcuffed and placed in the patrol car. See Weaver, 433 F.3d at 1107; Osife, 398 F.3d at 1144.

1 to people other than defendant, three credit cards not in defendant's name, and a 1" x 1" baggy,
2 was presumptively reasonable and did not violate defendant's Fourth Amendment rights.

3 **3. Search of Mini Cooper at the Fife Police Department's secure lot**

4 The search of the Mini Cooper in the Fife Police Department's secure lot presents a
5 closer question. Given the Court's analysis concerning the search of the Mini Cooper incident
6 to defendant's arrest, the important question here is whether this same exception applies once
7 the Mini Cooper was towed to the Fife secure lot. Defendant asserts that because the Mini
8 Cooper was moved and the search was not contemporaneous to his arrest, the search incident to
9 arrest exception does not apply. See Dkt. #48 at 6-8 (citing United States v. Ramos-Oseguera,
10 120 F.3d 1028 (9th Cir. 1997); United States v. Vasey, 834 F.2d 782 (9th Cir. 1987).

11 In applying Belton, the Ninth Circuit has recently emphasized that the search incident to
12 arrest exception "turns not upon the moment of arrest versus the moment of search but upon
13 whether the arrest and search are so separated in time or by intervening acts that the latter cannot
14 be said to have been incident to the former." Weaver, 433 F.3d at 1106 (emphasis added)
15 (quoting United States v. McLaughlin, 170 F.3d 889, 893 (9th Cir. 1999)).

16 Defendant does not dispute that his arrest on November 14, 2005 by Officer Luckman
17 was lawful. Accordingly, the question here is whether the search of defendant's Mini Cooper in
18 the Fife Police Department's secure lot was not so separated in time or by intervening acts that
19 the search can reasonably be considered incident to defendant's arrest in the casino parking lot.
20 See id. at 1106.

21 After defendant was placed in Officer Luckman's patrol car in the casino parking lot,
22 Officer Luckman testified that he engaged in the search of the Mini Cooper until the two units
23 from the Fife Police Department had to depart the casino. Officer Luckman called for a tow of
24 the Mini Cooper because he could not reasonably and safely search the Mini Cooper alone in the
25 parking lot of a casino while defendant remained in custody in the back of the patrol car. The

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1 car was towed approximately 20 blocks, which took only about five minutes. Defendant
2 remained in Officer Luckman's patrol car while he followed the tow truck directly to the Fife
3 secure lot. Although the Mini Cooper was moved and the search was conducted more than an
4 hour after the arrest, given the specific facts here, the search in the Fife secure lot was
5 presumptively incident to defendant's arrest. Although the time between defendant's arrest and
6 the search exceeds the thirty to forty-five minute delay in Vasey, but-for the departure of the
7 Fife officers, Officer Luckman would have continued searching the vehicle at the casino parking
8 lot incident to defendant's arrest. See Vasey, 834 F.2d at 787 ("[T]he search took place
9 anywhere from thirty to forty-five minutes after Vasey had been arrested, handcuffed, and
10 placed in the rear of the police vehicle. The officers conducted several conversations with
11 Vasey while he was in the police vehicle."). And, there is no evidence that Officer Luckman
12 was engaged in any lengthy or significant acts before the search, like repeatedly questioning
13 defendant before conducting the search as in Vasey. Id. Thus, the Court construes that the
14 search in the secure lot was contemporaneous with the arrest. This, however, does not end the
15 analysis. See Weaver, 433 F.3d at 1107 n.1 ("We reiterate, however, that time alone is never
16 dispositive of the contemporaneity inquiry under Belton."). Under the facts here, the Court also
17 does not view the tow as an intervening act. Unlike Ramos-Oseguera, defendant here was not
18 removed to the police station, but was inside the Officer Luckman's patrol car—the same place
19 he had been while Officer Luckman conducted the search in the casino parking lot. The Court
20 views the search in the Fife secure lot as simply a continuation of the search at the casino
21 parking lot. The vehicle's relocation to the Fife secure lot was simply necessitated by a
22 legitimate concern for Officer Luckman's safety.

23 Accordingly, the warrantless search and seizure of the items including the red satchel⁷
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25 ⁷ Given the Court's guidance on the lawfulness of the search in Fife secure lot, the search of the
26 satchel was also presumptively lawful. See Ramos-Oseguera, 120 F.3d at 1036 ("Belton permitted a
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1 containing, among other things, a partially completed Washington State driver's license on photo
2 paper, multiple Washington State driver's licenses with defendant's picture but the names of
3 others, a scale with a white residue, a zip-lock bag containing what appeared to be
4 methamphetamine, mail addressed to people other than defendant, and credit cards in the names
5 of others was presumptive reasonable and did not violate defendant's Fourth Amendment rights.

6 III. CONCLUSION

7 For all of the foregoing reasons, "Defendant Chang's Motion to Suppress Evidence for
8 Illegal Search and Seizure" (Dkt. ## 47, 48) is DENIED.

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10 DATED this 3rd day of March, 2008.

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13 Robert S. Lasnik
14 United States District Judge
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24 _____
25 search of a car's entire passenger compartment, including the inside of containers, as a search incident to
26 arrest.") (emphasis added).